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AUG  6 2002

Cynthia K. Frazzini
Assistant Attorney General
Environmental Enforcement Section
Fountain Square, Building C-4
Columbus, OH 43224
Counsel for Ohio Department of Natural Resources

Re:   Request for Stay and Remand in
      CZMA Consistency Appeal of Barnes Nursery, Inc.


Dear Counsel:

Our office has received the joint Stipulation for Stay and Remand from Barnes Nursery, Inc. ("Appellant") and the State of Ohio Department of Natural Resources ("Ohio") (together, "the parties") dated May 3, 2002. In addition, our office is in receipt of the Supplemental Materials in Support of Stipulation for Stay and Remand dated May 23, 2002.

By letter dated May 10, 2002, our office requested the parties submit copies of the significant new information to be considered by Ohio during the remand. In addition, our letter requested an explanation of why the new information is considered significant by the parties and how the information is relevant to the basis for Ohio's objection to Appellant's proposed project as inconsistent with Ohio's coastal management program. We requested the information and the analysis because the purpose of the remand provision in 15 CFR 930.129(d) is to "ensure that a State agency has an opportunity to...determine whether in light of the new information a proposed project is consistent with the enforceable policies of its management program." 65 FR 77151 (December 8, 2000). "This provision [15 CFR 930.129(d)] and those in section 930.129 (b) and (c) are intended to ensure that a State agency has an opportunity to reexamine a proposed activity when significant new information is developed or provided." Id. Providing the State an opportunity to examine significant new information for consistency with its coastal management program is particularly important in situations where the State's objection was based on insufficient information. However, if the parties cannot demonstrate that the information is new, is significant, or is relevant to the

State's consideration of the enforceable policies upon which its objection was based, there can be no grounds for this office to remand an appeal to the State for reconsideration.

The joint Supplemental Materials in support of Stipulation for Stay and Remand fails to provide any explanation or support for the proposition that the information included is significant or related to the enforceable policies upon which Ohio's objection was based. The submission of the parties is merely an index of the documents included for the record. The parties have not indicated that this information is either significant or related to the enforceable policies with which Ohio found the Appellant's project inconsistent. This office has no basis upon which to grant a remand to Ohio.

Further, the parties have requested and received from this office a series of stays to allow settlement discussions to occur. This consistency appeal has been stayed, effectively, for over one year. No communication from Ohio has been received indicating the likelihood that settlement and dismissal will occur. Accordingly, Appellant's initial brief and supplementary information must be filed in this office no later than 30 days from today or September 4, 2002. The Appellant should be mindful that failure to submit a brief or supporting materials within the required time period is grounds for dismissal. 15 CFR 930.129(a)(2). The State's initial brief and supplemental information must be filed in this office within 30 days of its receipt of Appellant's brief and supplemental materials.

If you have any questions concerning this decision or the procedures governing CZMA consistency appeals, please contact Molly Holt, of my office, at 301-713-2967 ext 215.


Sincerely,

Karl D. Gleaves
Assistant General Counsel for Ocean Services